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WASHINGTON, DC 20515
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318

Congress of the United States
House of Representatives
Washington, DC 20515-1009

COMMITTEE ON
JUDICIARY
VICE CHAIRMAN OF COURTS,
INTELLECTUAL PROPERTY AND THE
INTERNET
REGULATORY REFORM, COMMERCIAL
AND ANTITRUST LAW
COMMITTEE ON RULES
CO-CHAIRMAN OF THE
CREATIVE RIGHTS CAUCUS

April 22, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Dear Chairman Wheeler,

As Members of Congress with an interest in copyright issues, we are carefully following the debate surrounding the Federal Communications Commission's (FCC) proposed rules to reform the cable set-top box marketplace. The market for video and television programming is one of the most competitive sectors in the creative economy, and we encourage continued innovation in that arena. However, we are concerned about the potential unintended impact that regulations inconsistent with our copyright licensing system could have on the existing ecosystem. Specifically, we urge the FCC to take into account the important contributions made by the creative community.

There are many creators and skilled workers that make up the television programming universe. On any given set you will see directors, writers, actors, costumers, cameramen, set designers, and grips working to produce a program. Further behind the scenes, the songwriters, composers, and recording artists ensure that music is a part of the storytelling process. These are some of the countless creators whose livelihoods depend on the elaborate copyright licensing and compensation regime underpinning the creation of television programming. They depend on direct payments (residuals or participations) generated by licensing of television programming, contributions to their health and pension plans, and the revenue earned through licensing the rights to "sync" their music with television shows.


In order to keep this ecosystem intact and ensure that creators are able to make a fair living from their trade, we urge you to prevent third party competitors in the set-top box market from making commercial use of or modifying copyrighted programming without acquiring a direct license from the owner of the content.

Instead, appropriate measures would maintain incentives for entities to directly license copyrighted programming with copyright owners and preserve the value of existing licensed programming. They would also ensure that programmers are compensated for the use of their content in the new markets envisioned by the FCC's proposal.

We urge you to give full and careful consideration to these potential impacts. The FCC must take great care to ensure that this rulemaking does not result in harm to millions of creators in our country.

Thank you for your consideration.


Sincerely,



Doug Collins
Member of Congress




Theodore E. Deutch
Member of Congress




Tom Marino
Member of Congress




Hakeem S. Jeffries
Member of Congress




Marsha Blackburn
Member of Congress




Lamar Smith
Member of Congress



Tony Cardenas
Member of Congress



Ted Lieu
Member of Congress



Lois Frankel
Member of Congress



Cedric L. Richmond
Member of Congress



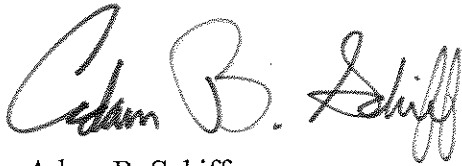
Julia Brownley
Member of Congress



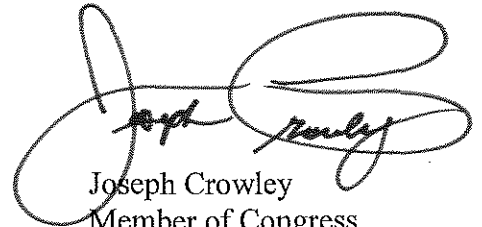
Mimi Walters
Member of Congress



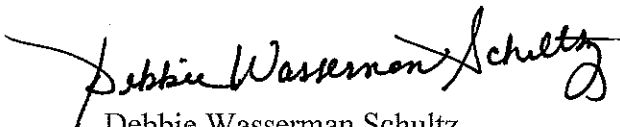
Danny K. Davis
Member of Congress



Adam B. Schiff
Member of Congress



Joseph Crowley
Member of Congress




Debbie Wasserman Schultz
Member of Congress



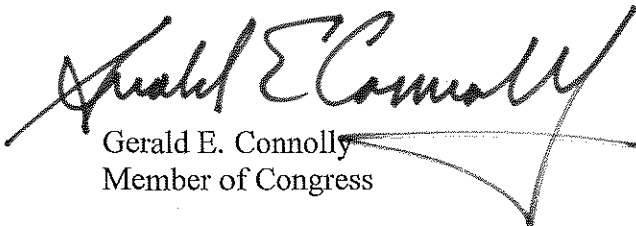
Steve Israel
Member of Congress



Alan S. Lowenthal
Member of Congress



Mike Bishop
Member of Congress



Gerald E. Connolly
Member of Congress



Brad Sherman
Member of Congress



Dave Trott
Member of Congress



Karen Bass
Member of Congress

cc: FCC Commissioners Clyburn, Rosenworcel, O'Rielly, and Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Karen Bass
U.S. House of Representatives
408 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Bass:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

Starting with broadcast, and continuing with cable, satellite and the Internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

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Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. The Commission has executed and will continue to execute this law in a manner that is consistent with the legal rights of copyright owners. The Notice of Proposed Rulemaking we adopted earlier this year proposes updating our rules implementing section 629 to allow device manufacturers and other innovators to develop devices or software that will give pay-television subscribers new ways to access the content they have purchased. We took this action because consumers have few alternatives to leasing set-top boxes from their pay-television providers. The statutory mandate is not yet fulfilled. This lack of competition has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. Included in every bill is a no-option, add-on fee for set top box rental. According to a congressional study, consumers spend, on average, \$231 in rental fees annually. Even worse for consumers, these rental fees continue to increase.²

The goal of this rulemaking is to promote competition, innovation and consumer choice. It will not alter the rights that content owners have under the Copyright Act; nor will it encourage third parties to infringe on these rights. All of the current players in the content distribution stream, including cable and satellite companies, set-top box manufacturers, app developers, and subscribers, are required to respect the exclusive rights of copyright holders. The rulemaking will require any companies that enter this market subsequent to our action to follow the same requirements. For guidance about what these requirements entail, all market participants can consult a series of Federal court decisions made over the past several decades that have carefully distinguished non-infringing uses of copyrighted video content from infringing uses.

While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

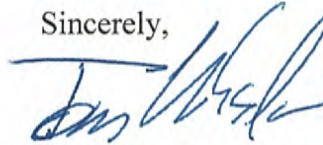
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As we develop a record and explore fulfilling our statutory mandate, I look forward to continuing to work with you on this important consumer issue.

Sincerely,

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Tom Wheeler

³ Writers Guild of America, West Reply Comments, MB Docket No. 16-42, CS Docket No. 97-80, at 15 (May 23, 2016).



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Mike Bishop
U.S. House of Representatives
428 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Bishop:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

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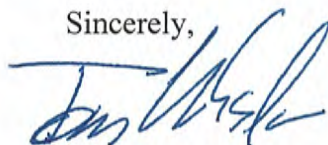
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Marsha Blackburn
U.S. House of Representatives
2266 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Blackburn:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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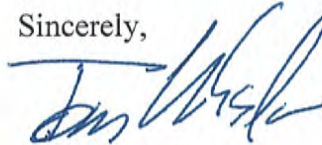
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Tom Wheeler

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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Julia Brownley
U.S. House of Representatives
1019 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Brownley:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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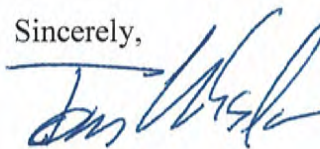
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Tony Cárdenas
U.S. House of Representatives
1510 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Cárdenas:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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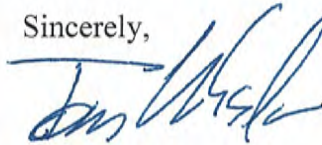
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Doug Collins
U.S. House of Representatives
1504 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Collins:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

Starting with broadcast, and continuing with cable, satellite and the Internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

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Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. The Commission has executed and will continue to execute this law in a manner that is consistent with the legal rights of copyright owners. The Notice of Proposed Rulemaking we adopted earlier this year proposes updating our rules implementing section 629 to allow device manufacturers and other innovators to develop devices or software that will give pay-television subscribers new ways to access the content they have purchased. We took this action because consumers have few alternatives to leasing set-top boxes from their pay-television providers. The statutory mandate is not yet fulfilled. This lack of competition has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. Included in every bill is a no-option, add-on fee for set top box rental. According to a congressional study, consumers spend, on average, \$231 in rental fees annually. Even worse for consumers, these rental fees continue to increase.²

The goal of this rulemaking is to promote competition, innovation and consumer choice. It will not alter the rights that content owners have under the Copyright Act; nor will it encourage third parties to infringe on these rights. All of the current players in the content distribution stream, including cable and satellite companies, set-top box manufacturers, app developers, and subscribers, are required to respect the exclusive rights of copyright holders. The rulemaking will require any companies that enter this market subsequent to our action to follow the same requirements. For guidance about what these requirements entail, all market participants can consult a series of Federal court decisions made over the past several decades that have carefully distinguished non-infringing uses of copyrighted video content from infringing uses.

While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

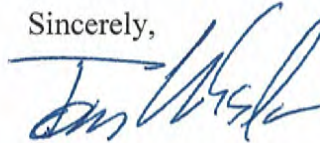
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Gerald E. Connolly
U.S. House of Representatives
2238 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Connolly:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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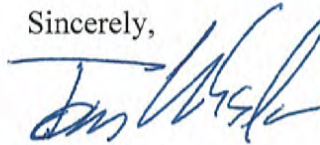
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Joseph Crowley
U.S. House of Representatives
1436 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Crowley:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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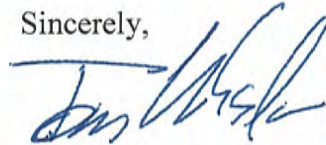
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Danny K. Davis
U.S. House of Representatives
2159 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Davis:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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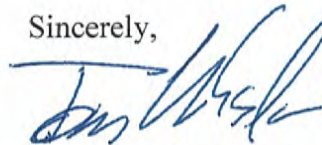
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Ted Deutch
U.S. House of Representatives
2447 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Deutch:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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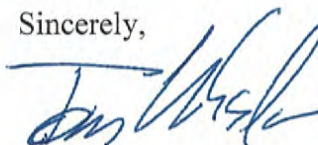
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Lois Frankel
U.S. House of Representatives
1037 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Frankel:

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While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

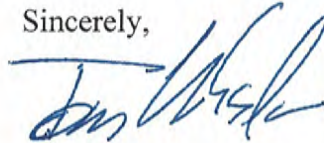
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As we develop a record and explore fulfilling our statutory mandate, I look forward to continuing to work with you on this important consumer issue.

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Tom Wheeler

³ Writers Guild of America, West Reply Comments, MB Docket No. 16-42, CS Docket No. 97-80, at 15 (May 23, 2016).



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Steve Israel
U.S. House of Representatives
2457 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Israel:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

Starting with broadcast, and continuing with cable, satellite and the Internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

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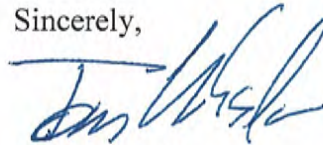
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As we develop a record and explore fulfilling our statutory mandate, I look forward to continuing to work with you on this important consumer issue.

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Tom Wheeler

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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Hakeem Jeffries
U.S. House of Representatives
1607 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Jeffries:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

Starting with broadcast, and continuing with cable, satellite and the Internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

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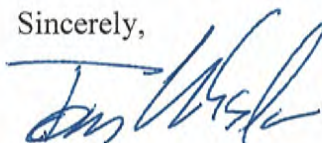
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Ted Lieu
U.S. House of Representatives
415 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Lieu:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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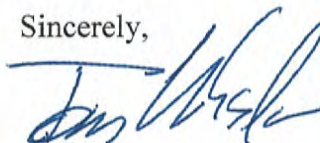
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Alan Lowenthal
U.S. House of Representatives
108 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Lowenthal:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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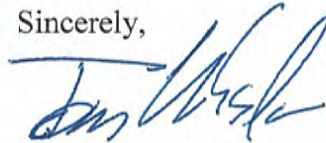
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Tom Marino
U.S. House of Representatives
410 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Marino:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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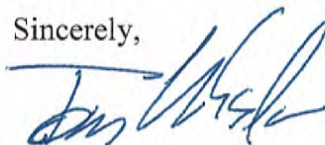
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Cedric L. Richmond
U.S. House of Representatives
240 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Richmond:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

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Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. The Commission has executed and will continue to execute this law in a manner that is consistent with the legal rights of copyright owners. The Notice of Proposed Rulemaking we adopted earlier this year proposes updating our rules implementing section 629 to allow device manufacturers and other innovators to develop devices or software that will give pay-television subscribers new ways to access the content they have purchased. We took this action because consumers have few alternatives to leasing set-top boxes from their pay-television providers. The statutory mandate is not yet fulfilled. This lack of competition has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. Included in every bill is a no-option, add-on fee for set top box rental. According to a congressional study, consumers spend, on average, \$231 in rental fees annually. Even worse for consumers, these rental fees continue to increase.²

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While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

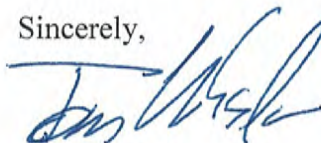
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As we develop a record and explore fulfilling our statutory mandate, I look forward to continuing to work with you on this important consumer issue.

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Tom Wheeler

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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Adam B. Schiff
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Schiff:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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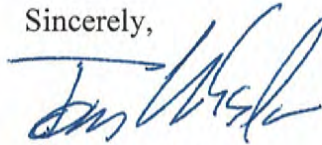
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Tom Wheeler

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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Brad Sherman
U.S. House of Representatives
2242 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Sherman:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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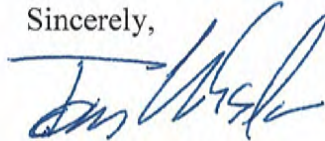
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Lamar Smith
U.S. House of Representatives
2409 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Smith:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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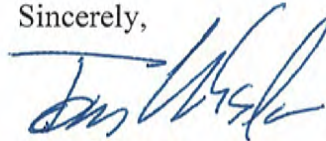
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Dave Trott
U.S. House of Representatives
1722 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Trott:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

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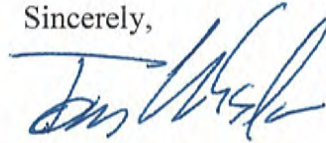
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Tom Wheeler

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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Mimi Walters
U.S. House of Representatives
236 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Walters:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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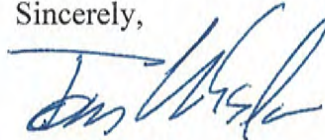
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competition. While fears of piracy have been raised in this proceeding, the WGAW's careful analysis is that the Commission's rules can promote competition *and* protect content."³

As we develop a record and explore fulfilling our statutory mandate, I look forward to continuing to work with you on this important consumer issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized, cursive script.

Tom Wheeler

³ Writers Guild of America, West Reply Comments, MB Docket No. 16-42, CS Docket No. 97-80, at 15 (May 23, 2016).



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2016

The Honorable Debbie Wasserman Schultz
U.S. House of Representatives
1114 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Wasserman Schultz:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."¹

Starting with broadcast, and continuing with cable, satellite and the Internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

¹ *Sony Corp. v. Universal City Studios*, 464 U.S. 416, 429 (1984).

Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. The Commission has executed and will continue to execute this law in a manner that is consistent with the legal rights of copyright owners. The Notice of Proposed Rulemaking we adopted earlier this year proposes updating our rules implementing section 629 to allow device manufacturers and other innovators to develop devices or software that will give pay-television subscribers new ways to access the content they have purchased. We took this action because consumers have few alternatives to leasing set-top boxes from their pay-television providers. The statutory mandate is not yet fulfilled. This lack of competition has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. Included in every bill is a no-option, add-on fee for set top box rental. According to a congressional study, consumers spend, on average, \$231 in rental fees annually. Even worse for consumers, these rental fees continue to increase.²

The goal of this rulemaking is to promote competition, innovation and consumer choice. It will not alter the rights that content owners have under the Copyright Act; nor will it encourage third parties to infringe on these rights. All of the current players in the content distribution stream, including cable and satellite companies, set-top box manufacturers, app developers, and subscribers, are required to respect the exclusive rights of copyright holders. The rulemaking will require any companies that enter this market subsequent to our action to follow the same requirements. For guidance about what these requirements entail, all market participants can consult a series of Federal court decisions made over the past several decades that have carefully distinguished non-infringing uses of copyrighted video content from infringing uses.

While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

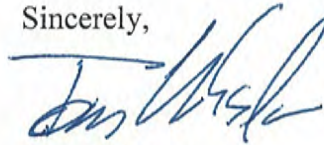
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